



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/152916

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 15, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on November 21, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly determined Petitioner's FS benefits for August – November, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pam Johnson

Sheboygan County Department of Human Services  
3620 Wilgus Ave  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. On July 18, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease to \$26/month effective August 1, 2013 due to a change in his rent

expense. The agency's determination was based on unearned income of \$828/month and \$0 rent expense.

3. On September 23, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would increase to \$153/month effective October 1, 2013 due to a change in his rent expense. The agency's determination was based on unearned income of \$828/month and \$410 rent expense.
4. On October 14, 2013, the agency issued a Notice of Decision to the Petitioner informing him that his FS benefits would decrease to \$142/month effective November 1, 2013. The Department's sole basis for benefit reduction was imposition of a reduced benefit level due to a mandatory change ordered by the Secretary of the federal Department of Agriculture. The Petitioner's income and allowable FS income deductions for November are unchanged from those used in the October benefit calculation.
5. On October 15, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

In determining the amount of FS to be issued each month, the agency must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$149 per month for a one-person household. 7 C.F.R. §273.9(d)(1); FoodShare Wisconsin Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FoodShare Wisconsin Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FoodShare Wisconsin Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FoodShare Wisconsin Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FoodShare Wisconsin Handbook, App. 4.6.7.

In a fair hearing concerning the sufficiency of FS issued, the burden of proof is on the Department to demonstrate that it correctly computed the petitioner's FS allotments, and the petitioner must then rebut this evidence with his own evidence showing the agency was incorrect.

The federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5, section 101) included an appropriation for an across-the-board increase in FoodShare allotments of 13.6% as an economic stimulus measure. The appropriation increase was limited as to time and a rule formulation involving the "thrifty food plan." The federal FS statute, at 7 U.S.C. § 2027, states that the Secretary of the Department of Agriculture shall limit allotments so that they "are not in excess of the appropriation for ...[the fiscal year]." When the Secretary determines that the participants' allotments will exceed the appropriation, the Secretary must direct the states to reduce allotments to align with the appropriation. See, in accord, federal code at 7 C.F.R. § 273.10(e)(4). The Secretary has made that determination, and has announced that the 13.6% increase must expire effective October 31, 2013. That declaration is reflected in a U.S. Department of Agriculture memo, "SNAP – Fiscal Year 2014 Cost-of-Living Adjustments and ARRA Sunset Impact on Allotments," issued August 1, 2013, available online at [http://www.fns.usda.gov/snap/rules/Memo/2013/FY\\_2014\\_COLA\\_memo.pdf](http://www.fns.usda.gov/snap/rules/Memo/2013/FY_2014_COLA_memo.pdf). See, in accord, state policy at BEPS/DFS Operations Memo, #13-27, September 9, 2013.

The Petitioner does not dispute the agency's calculations of his monthly unearned income or his rent expense. Other than the standard deduction and utility standard, no other deductions are applicable to the Petitioner. I reviewed the agency's budget screens for its determinations regarding Petitioner's benefits from August – November, 2013. I find no error on the agency's part. The Petitioner was unclear of the reasons for the changes in his benefits. The worker explained at the hearing that the changes related to

changes in his rent expense as well as the mass change in the FS regulations effective November 1, 2013. Based on the evidence presented, the agency properly determined the Petitioner's FS benefits for the period of August – November, 2013.

### **CONCLUSIONS OF LAW**

The agency properly determined the Petitioner's monthly FS allotments for the period of August – November, 2013.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of December, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 9, 2013.

Sheboygan County Department of Human Services  
Division of Health Care Access and Accountability